

ENTERED

May 31, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARK ARMSTRONG	§	CIVIL ACTION No
and ERIKA	§	4:18-cv-01238
ARMSTRONG,	§	
Plaintiffs,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
WING ENTERPRISES	§	
INC,	§	
Defendant.	§	

**ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION**

Plaintiffs Mark and Erika Armstrong brought this product liability action after Mark Armstrong suffered a severe head injury when he fell from a ladder manufactured by Defendant Wing Enterprises, Inc. Dkt 1. The matter was referred for disposition to Magistrate Judge Christina A. Bryan. Dkt 119.

Pending is a Memorandum and Recommendation by Magistrate Judge Christina A. Bryan dated April 14, 2023, recommending that the third motion by Defendant Wing Enterprises, Inc, for summary Judgment be denied. Dkt 145; see Dkt 138. Judge Bryan recommends that the motion be denied because it is largely precluded by prior rulings of this Court, and Plaintiffs have met their burden to create genuine issues of material fact on their manufacturing defect claim related to the width of the outer rails of the ladder. Dkt 145.

The district court reviews *de novo* those conclusions of a magistrate judge to which a party has specifically objected. See FRCP 72(b)(3) & 28 USC § 636(b)(1)(C); see

also *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989, *per curiam*). The district court may accept any other portions to which there's no objection if satisfied that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglass v United Services Automobile Association*, 79 F3d 1415, 1430 (5th Cir 1996, *en banc*); see also FRCP 72(b) advisory committee note (1983).

None of the parties filed objections. No clear error otherwise appears upon review and consideration of the Memorandum and Recommendation, the record, and the applicable law.

The Memorandum and Recommendation of the Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 145.

Defendants' third motion for summary judgment is DENIED. Dkt 138.

SO ORDERED.

Signed on May 31, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Ch R Eskridge II". The signature is stylized with a large "C" and "E", and a Roman numeral "II" at the end.

Hon. Charles Eskridge
United States District Judge